

**LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP**  
ATTORNEYS AT LAW

77 Water Street, Suite 2100  
New York, NY 10005  
Telephone: 212.232.1300  
Fax: 212.232.1399  
[www.lbbslaw.com](http://www.lbbslaw.com)

JURA C. ZIBAS  
DIRECT DIAL: 212.232.1353  
E-MAIL: [ZIBAS@lbbslaw.com](mailto:ZIBAS@lbbslaw.com)

November 9, 2010

File No.  
50013-685

**VIA ECF**

Honorable Steven M. Gold  
Chief Magistrate Judge  
United States District Court  
Eastern District of New York  
225 Cadman Plaza East, Room 1217  
Brooklyn, New York 11201

Re: Johnson & Johnson, et al. v. South Pointe Wholesale Inc., E.D.N.Y., 08 CIV 1297  
(SLT)(SMG)

Dear Judge Gold:

We represent defendants MSI Medical Supply, Inc. ("MSI") and Michael Barba in connection with the above-referenced matter. We submit this letter regarding outstanding discovery issues we would like to raise at the November 15, 2010 conference. MSI requests an extension of discovery to complete outstanding fact discovery.

Since the last conference, plaintiffs have produced hundreds of pages of documents that were responsive to document requests served over six months ago. We have diligently worked to investigate facts surrounding the information provided in these documents. As part of our investigation, we served non-party subpoenas for documents and depositions. One party, Kinray, cancelled a scheduled deposition and we will re-schedule the deposition as soon as Kinray provides a date. We have recently been contacted by Cardinal Health Inc. in response to a subpoena served on several Cardinal Health Inc entities. There was misdirection within Cardinal Health Inc. regarding the subpoena and we finally have contact with the proper attorneys who are beginning to search for the documents and then a deposition will be scheduled. Cardinal Health Inc. intends to respond to our requests by early December. We may require Court intervention to enforce portions of the subpoena. Thus, additional time is required to complete the non-party depositions. We have requested more specific dates from the non-parties in order to provide such dates at the time of the conference.

In addition, we have just been notified by plaintiffs that boxes of allegedly counterfeit product from Scotland are available in New York. For the past few months, we have requested information about the boxes and confirmation of where boxes to be used as evidence in this case are located.

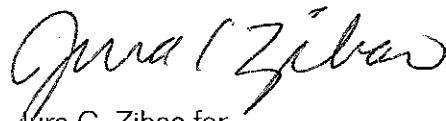
Honorable Steven M. Gold  
November 9, 2010  
Page 2

We were just informed this week that the boxes are available for inspection. MSI does not yet know if additional discovery will be required until the boxes are inspected.

The plaintiffs have redacted many documents and claimed privilege in response to numerous document requests. Plaintiffs have failed to produce a privilege log to date. MSI requests additional time for discovery in order to obtain the privilege log and object to document designation, if appropriate.

Thus, MSI requests an extension of time for discovery. We respectfully request to be heard on November 15, 2010.

Respectfully Submitted,



Jura C. Zibas for  
LEWIS BRISBOIS BISGAARD & SMITH LLP

cc: All Counsel of Record via ECF